

REMARKS

Claims 1, 2, 5-9 and 11-13 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Pollitt et al., PCT Publication No. WO 98/21159, in view of evidence "product brochures" submitted by the Applicant on June 1, 2004.

The Examiner's rejections are respectfully traversed.

As now claimed, the Applicant's invention is directed to a settable mixture including polybutadiene, a flow-enhancing liquid and a dry silica sand. The polybutadiene occupying between 2% and 4% by volume of the mixture and the sand having no more than 2% water content. The mixture also contains aluminum oxide to a selected maximum of 1.4% by weight of the silica sand and ferrous oxide to a selected maximum of 0.5% by weight of the silica sand.

The Applicant has determined that there are maximum amounts of both aluminum oxide and ferrous oxide that may be contained in the silica sand or the mixture will not function as desired. Pollitt'159 is directed to making a similar material, however, there is no disclosure as to the levels of aluminum oxide and/or ferrous oxide in the mixture and more importantly there is no disclosure as to the maximum levels of either the aluminum oxide or the ferrous oxide.

The enhanced setting time achieved by the selection of the Applicant's preferred sand, is a considerable advantage to the product which sets by exposure to the atmosphere but it preferably kept away from any rainfall until it is fully set. A rapid setting time is a clear advantage of the Applicant's invention.

The Applicant's was first desirous of obtaining a non-staining geo-fix compound to avoid the unsightly staining of paving laid and pointed with this mixture. The evidence previously submitted in the 1.132 declaration, specifically the second photograph, showed

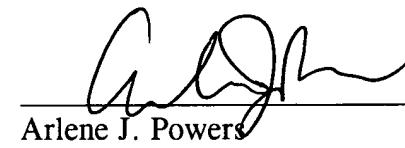
clearly how the paving is stained in the presence of increased ferrous oxide or aluminum oxide and increased setting times. The Applicant determined that both the ferrous oxide and aluminum oxide content of the sand should be kept to a minimum. The claims have been amended to include the limitation to lower preferred levels of ferrous oxide and aluminum oxide to help clarify the invention and distinguish the invention from the prior art of record.

Both staining and lengthening of setting time were more noticeably affected by excessive aluminum oxide content, but nevertheless ferrous oxide content can also produce a similar result. Thus, the Applicant's believe the ferrous oxide content should be maintained below 1.4% to avoid staining and longer setting time.

As the cited prior art reference does not disclose or even suggest the need for specific ranges of both the aluminum oxide and the ferrous oxide, the Applicant does not believe their invention is anticipated by Pollitt, WO 98/21159. Thus, claims 1, 2, 5-9 and 11-13 are considered to be patently distinguishable over the prior art of record.

The application is now considered to be in condition for allowance, and an early indication of same is earnestly solicited.

Respectfully submitted,



Arlene J. Powers
Registration No. 35,985
Gauthier & Connors LLP
225 Franklin Street, Suite 2300
Boston, Massachusetts 02110
Telephone: (617) 426-9180
Extension 110